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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,978	08/26/2003	David N. Nelson	6044.102US	6716

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EXAMINER

SALDANO, LISA M

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/649,978

Applicant(s)

NELSON, DAVID N.

Examiner

Lisa M. Saldano

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9-11 and 13-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-11 and 13-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 1 is objected to because of the following informalities:

Regarding claim 1, it appears that an extra space was mistakenly typed between the letters "d" and "i" of the word direct.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 7, 9, 11, 13-16 and 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Bunch (5,655,245).

Regarding claims 1, 9, 19 and 20, Bunch discloses a portable blower/vacuum handle arrangement 10 that is capable of cleaning a landscape surface. Bunch discloses a conduit system with an intake portion 36 and an outtake portion 34 in direct fluid communication with one another. The outlet portion has a smaller diameter than the inner diameter of the intake portion. The outlet portion is configured for attachment to a vacuum source or suction line of a pump (see column 2, lines 55-60). The intake portion has an end through which landscape material can be drawn in (see Fig.1). As disclosed in Fig.1, the system is configured for holding in downward

Art Unit: 3673

orientation with the intake against a landscape. The device allows for rock, debris and dirt to be drawn in whereby the rock is not transmitted into the intake and a pressure state allows the rock to be deposited on the landscape. The intake and outlet portions are formed as one piece in an assembly.

Regarding claims 2 and 3, Bunch discloses a portable blower/vacuum handle arrangement 10 wherein the intake portion extends at a predetermined angle of zero degrees (0°) away from at least a portion of the outlet.

Regarding claim 7, Bunch discloses a portable blower/vacuum handle arrangement 10 whereby the cleaning device is configured such that the intake portion can be lifted vertically with respect to a landscape surface.

Regarding claim 11, Bunch discloses a portable blower/vacuum handle arrangement 10 comprising a handle 48.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4-6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bunch as applied to claims 1 and 2 above.

Regarding claims 4-6, although Bunch fails to disclose the particular range of angles for the intake as recited by the applicant of the present invention, it would have been obvious to one

Art Unit: 3673

of ordinary skill in the art at the time of the invention to modify the invention to comprise angles within the ranges recited by the applicant. The invention of Bunch is fully capable of operating with intake angles located in the range of angles relative to the outlet as recited in claims 4-6. It is a matter of design choice to select a particular angle. Furthermore, the applicant has not expressed the criticality of having using the recited range of angles.

Regarding claim 10, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the outlet portion to comprise an elbow shape because this is a matter of design choice as well. The invention of Bunch is also capable of operating with an outlet oriented in an elbow because the suction provided by the pump would create sufficient suction to drawn in debris even with the elbow shaped portion.

Regarding claim 13-18, although Bunch fails to explicitly disclose a method for cleaning a landscape surface, Bunch's disclosure provides the basic steps required to develop a method as recited by the applicant of the present invention.

6. Claims 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bunch (5,655,245).

Bunch discloses a portable blower/vacuum handle arrangement 10 that is capable of cleaning a landscape surface. Bunch discloses a conduit system with an intake portion 36 and an outtake portion 34 in direct fluid communication with one another. The outlet portion has a smaller diameter than the inner diameter of the intake portion. The outlet portion is configured for attachment to a vacuum source or suction line of a pump (see column 2, lines 55-60). The intake portion has an end through which landscape material can be drawn in (see Fig.1). As

Art Unit: 3673

disclosed in Fig. 1, the system is configured for holding in downward orientation with the intake against a landscape. The device allows for rock, debris and dirt to be drawn in whereby the rock is not transmitted into the intake and a pressure state allows the rock to be deposited on the landscape. The intake and outlet portions are formed as one piece in an assembly. Bunch discloses a portable blower/vacuum handle arrangement 10 wherein the intake portion extends at a predetermined angle of zero degrees (0°) away from at least a portion of the outlet. Bunch discloses a portable blower/vacuum handle arrangement 10 whereby the cleaning device is configured such that the intake portion can be lifted vertically with respect to a landscape surface. Bunch discloses a portable blower/vacuum handle arrangement 10 comprising a handle 48.

Although Bunch fails to explicitly disclose a method for cleaning a landscape surface, it would have been obvious to one of ordinary skill in the art at the time of the invention to develop a method because Bunch's disclosure provides the basic steps required to develop a method as recited by the applicant of the present invention.

Furthermore, although Bunch fails to disclose the particular range of angles for the intake as recited by the applicant of the present invention, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention to comprise angles within the ranges recited by the applicant. The invention of Bunch is fully capable of operating with intake angles located in the range of angles relative to the outlet as recited by the applicant of the present invention; it is a matter of design choice to select a particular angle. Moreover, the applicant has not expressed the criticality of having using the recited range of angles.

Response to Arguments

7. Applicant's arguments with respect to claims 1-7, 9-11 and 13-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. The applicant amended the claims to include limitations that were not previously presented, such as "...a conduit system with an intake portion and outlet portion in direct fluid communication with one another..." and "...draws landscape material which includes dirt and/or debris and landscape rock...into the intake portion...and resist landscape rock from passing through the outlet portion.

Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

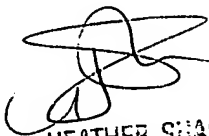
Art Unit: 3673

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lisa M. Saldano whose telephone number is 703-605-1167. The examiner can normally be reached on Monday-Friday, 8:30am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on 703-308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lms



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